IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/07/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.18952 OF 2003
AND
CRL.M.P.Nos.5288,5289 & 6149/2003.

K.Pounrajan
rep.by his Power Agent
M.V.V.N.Arumuga Pandian ... Petitioner

-Vs-

1.The Collector,
Chennai District,
Chennai-600 001.

2.The Executive Magistrate,
Egmore-Nungambakkam Taluk,
Spur Tank Road, Chennai-600 031.

3.Annai Sandya Nagar Kudiyirupor
Nala Sangam,
Annai Sandya Nagar Extension,
Koyambedu, Chennai-600 107
rep.by its President
P.Jayaraman ... Respondents

(Third respondent is impleded as
per the order dt.4.7.2003 made
in Crl.M.P.No.5934/2003)

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

!For petitioner : Mr.K.M.Vijayan,
senior counsel for
Mr.K.N.Nataraj

^For R.1 & R.2 : Mr.A.N.Thambidurai,
Govt.Advocate(crl.side)

For R.3 : Mr.C.Chinnusamy,
senior counsel for
Mr.D.Ashok Kumar

:O R D E R
The above petition was originally filed as Writ Petition in W.P.No.16779 of 2003 and when the same was posted for admission, a learned single Judge of this Court, after having observed that as the subject matter is governed by Section 145 Cr.P.C. relating to breach of peace, all the contentions in the above petition could be advanced in a proceeding that may be initiated under Section 482 Cr.P.C., has directed the Registry to covert the writ petition into a criminal original petition under Section 482 of the Code of Criminal Procedure. Accordingly, the writ petition was converted into the above criminal original petition.

2. The above petition has been filed praying to call for the records in respect of the order dated 5.6.2003 passed by the first respondent in his proceeding J3/55003/2002 and quash the same.

3. The petitioner has come forward to file the above petition challenging and seeking to quash the order passed by the District Collector, Chennai dated 5.6.2003 pursuant to the show-cause notice issued by him calling for the petitioner to show-cause within fifteen days from the date of receipt of the said notice as to why the impugned order of the Tahsildar and the Executive Magistrate, Egmore-Nungambakkam should not be set aside for the reason assigned therein whereby the said Tahsildar has declared that the petitioner is entitled to possession of the disputed properties lying in T.S.Nos.54,57 and 58 in Block No.52 of Koyambedu village by way of Melvaram rights and entitled to retain possession until evicted therefrom in due course of law and forbidding all disturbances of such possession until such eviction. It is regarding this order passed by the Tahsildar and the Executive Magistrate, Egmore-Nungambakkam Taluk, Chennai, as per his proceeding in C3/11949/02, dated 20.1.2003, the said show-cause notice had been issued by the District Collector followed by the order impugned herein.

4. The averments of the petition are that the petitioner is in possession and enjoyment of the disputed land dating back from 1950's; that consequent to the inauguration of CMBT, the land grabbers fabricated various documents with the connivance of the revenue officials in connection with which a case in Cr.No.1055/2002 has been registered by the Inspector of Police, Koyambedu Police Station and a proceeding under Section 145 Cr.P.C. has been initiated with the second respondent and on a thorough enquiry held, a final order, determining the petitioner's entitlement to Melvaram right over the disputed property and to retain possession, as stated supra, has been passed by the second respondent.

5. The petitioner would further submit that he has also filed a suit in O.S.No.420 of 2003 before the City Civil Court, Chennai and in the said suit, in I.A.No.1964 of 2003, an ex parte interim injunction was also granted and subsequently since the said I.A. was dismissed on 30.4.2003, he filed a C.M.A. before this Court and this Court granted interim stay till the CMA is taken on file by the City Civil Court, Chennai and the same is in force; that he was shocked and surprised to receive the said show-cause notice from the District Collector and would submit that the same is without jurisdiction, pre-determined and biased and would confirm the order of the

second respondent as highly justifiable.

6. The petitioner would further submit that he sent a representation to the first respondent on 28.5.2003 making request to furnish the certified copy of the appeal petition alleged to have been filed by the third respondent as against the order of the second respondent, but the same was not provided with and on such grounds, would ultimately pray to quash the proceedings of the District Collector, Chennai since being against the principles of natural justice, biassed and in excess of jurisdiction and without any locus standi.

7. The third respondent would file a counter thereby submitting that their Association comprises of 58 members and they are all in occupation of half-a-ground to three fourth ground physically for more than 30 years and they have also perfected their title by way of adverse possession since the lands in question are Government lands; that when they were attempted to be evicted from the said lands earlier, they filed a suit in O.S.No.5054 of 1995 against the Metro Water which was dismissed as infructuous owing to the admission of the Metro Water that the lands in possession of the Association Members do not come under the purview of the Metro Water and they have also filed a writ petition against the Highways in W.P.No.7473 of 1997 and the same was disposed of by declaring that no dispossession of the lands from the clutches of the members of the Association is possible and if at all the same is possible, it should be only under due process of law; that the High Court further held that as long as the possession of the Members of the Association is not a hindrance to the free flow of traffic, the Government cannot initiate any action and only in the event of such hindrance, the Government can take action and that too only under due process of law and in spite of the same, since the Highways had indulged in similar threats, they have also filed a suit in O.S.No.7876 of 1999 before the Court of XIII Assistant Judge, City Civil Court, Madras and an order of ad-interim injunction was also ordered in their favour and the said suit is pe nding.

8. The third respondent would further submit that as some of the anti-social elements attempted to encroach on the lands in their possession with the help of manipulated documents, they have lodged a complaint before the Police, who referred the matter to the second respondent, wherein the petitioner has chosen to implead himself by getting a direction from this Court and thereafter an order has been passed by the second respondent as if the petitioner is entitled to Melvaram rights, while neither any Melvaram right nor any yielding right is sustainable within the city of Chennai and the same is only a mockery of justice; that the issue of the said order by the Tahsildar is against law and he has no power under the provisions of the Code of Criminal Procedure to pass such an order, while no cultivation nor any yielding trees or plants can be seen at the said site as the said site is barren and a building site.

9. The third respondent would further submit that the order that had been passed being an error and mistake on the face of the records, the matter is now seized by the Collector and an enquiry is going on against the mischief committed by the Tahsildar; that the concerned Tahsildar during

his tenure of one year as Tahsildar of EgmoreNungambakkm Taluk had amassed a sum of five crores of rupees and as against this, a full-fledged enquiry is going on. Further submitting the details regarding the other proceedings initiated by both the parties against each other, this respondent would submit that as long as the Collector is the superior officer and the order passed by the Tahsildar being outside the jurisdiction and ultra vires of the Constitution and as there is no sanctity attached to the order, the same can be dealt with by the Collector as the Superior Officer as he cannot allow a subordinate officer to commit a fraud; that the petitioner is represented by one Arumugha Pandian, who is a criminal and whose photo had also been published in various newspapers to the effect that he is one of the land grabbers and as he had been detained by police etc.; that as long as the writ petition is admitted and as the order passed by the Tahsildar had been stayed by this Court in W.P.M.P.No.11966/200 3 in W.P.No.9400/2003, the present petition under Section 482 Cr.P.C., seeking this Court's jurisdiction, is not correct; that though no appeal will lie against the order passed by the Executive Magistrate, that does not mean that the Collector cannot intervene in respect of the matters where fraud is taking place and only since there is no appeal as against the order passed by the Tahsildar, they have filed the writ petition wherein the stay has been granted and similarly they have also lodged their protest before the Collector in the form of an appeal as well as in the form of a representation and in such circumstances, the petitioner is trying to agitate the matter as if the Collector has no appeal powers. On such grounds, the third respondent would pray to dismiss the above petition.

10. During arguments, the learned senior counsel appearing on behalf of the petitioner, besides extracting a few facts brought forth in the petition, would greatly rely on the point that it is a proceeding initiated by the Tahsildar under Section 145 Cr.P.C. wherein the District Collector has absolutely no role to play and hence the proceeding initiated and the orders passed by the District Collector is nothing but bereft of jurisdiction and becomes liable to be set aside or quashed and would pray to allow the above criminal original petition.

11. On the contrary, the learned senior counsel appearing on behalf of the third respondent would show from the Collector's Manual for him to gain jurisdiction on such matters of importance wherein the public interest is involved and would try to justify the initiation of the proceeding by the District Collector and passing of his showcause notice and subsequent proceedings, which is under challenge.

12. On the part of the learned Government Advocate representing the first and second respondents, he would argue to the effect that on an appeal petition filed on the part of the Citizens forum viz. Annai Sandya Nagar Kudiyirupor Nala Sangam, the third respondent herein, represented by its President P.Jayaraman against the order of the second respondent, the first respondent/the District Collector has initiated the impugned proceedings, taking stock of the alarming flutter created by the order of the

second respondent/the Executive Magistrate and the Tahsildar, Egmore-Nungambakkam Taluk, conferring possessory rights in favour of the petitioner, a private individual, regarding a valuable land measuring 4.50 acres in old Survey No.25/1,33/2 and 33/4 corresponding to T.S.Nos.34,57 and 58 of Block No.52 of Koyambedu village. The learned Government Advocate would further submit that the third respondent Association has filed a suit and obtained an order of interim injunction against dispossession of the members of the association and in these circumstances, the Collector cannot be a passive spectator and has rightly caused his interference particularly when it has been brought to his notice by way of an appeal petition stating thereby that in total disregard of the documents produced by them and the orders passed by the civil Court, the Tahsildar has arbitrarily decided the matter in favour of the petitioner for corrupt reasons and hence the Collector had rightly interfered with and has issued the impugned show-cause notice to the petitioner calling upon him to show-cause within 15 days as to why the impugned order of the Tahsildar therein should not be set aside for reasons assigned. The learned Government Advocate would try to justify the action of the Collector in issuing the show-cause and would ultimately pray to dismiss the above petition.

13. Since a question was raised not only regarding the jurisdiction of the District Collector in entertaining the representation of the third respondent in the form of an appeal and issuing the show-cause notice but also the very proceeding initiated by the Tahsildar in his capacity as the Executive Taluk Magistrate under Section 145 Cr.P.C. in resolving the dispute in between the petitioner and the third respondent especially regarding the right of possession of the land mentioned supra, a discussion on jurisdictions gained by both the Tahsildar and the Executive Magistrate and the District Collector, Chennai becomes inevitable.

14. The land in question is in an extent of 4.50 acres located in the heart of the city, worth crores of rupees, needless to point out that it is a valuable property. The Tahsildar and the Executive Magistrate concerned, under the pretext of a criminal case registered in Cr.No.1055/2002 by the K-10 Koyambedu Police under Section 145 Cr.P. C. dated 8.5.2002 having been referred to him, he is said to have gained jurisdiction so as to initiate a proceeding and give a finding thereby determining the right of the petitioner to be in possession of the disputed property, as mentioned supra.

15. At the outset the big question that would arise in the mind of everyone is `whether the police could register a case under Section 1 45 Cr.P.C. as it comes to be seen in the registering of the case in Cr.No.1055/2002 by K-10 Koyambedu Police'? A complaint could be given by the aggrieved party and the case could be registered only under the specific provisons of the criminal law for commission of certain specific offences and this Court wonders how a case under Section 145 Cr.P.C. could be registered by the police wherein nowhere it is provided under law for a case to be registered under Section 145 Cr.P.C. by the police.

16. Secondly, the object sought to be achieved under Section

145 Cr.P.C. being prevention of breach of peace and tranquility in the area, the Executive Magistrate concerned is only empowered to initiate a proceeding under Section 145 Cr.P.C. either based on a report by the police or on his own information and on being satisfied that there exists a breach of peace and tranquility to the subjects regarding a dispute concerned with the land, water, fisheries, market place etc., the said Magistrate, in order to prevent the breach of peace and tranquility to the subjects, could initiate such proceeding within his jurisdiction.

17. Thirdly, the upper forums of law have time and again decided that when a civil case has already been initiated and a restraint order has been passed by the civil forum regarding the same subject matter, no proceeding under Section 145 Cr.P.C. would arise and the Executive Magistrate is not entitled to initiate a proceeding of that nature.

18. Fourthly, if on such a proceeding initiated under Section 145 Cr.P.C., any order is passed by the Executive Magistrate, whether he is the Taluk Magistrate or the Sub Divisional Executive Magistrate, the same could be testified only on revision before the High Court within the powers conferred on the jurisdiction High Court under Sections 397,401,482 etc. and no other authority, much less the District Collector, has been conferred with any power to testify the validity of the order passed by the Executive Magistrate much less on appeal.

19. So far as the first point raised above, regarding the police registering the case under Section 145 Cr.P.C is concerned, since no case under Section 145 Cr.P.C. could be registered by the police, the registering of the case by the K-10 Koyambedu Police Station in its Cr.No.1055 of 2002 dated 12.6.2002 is nothing but erroneous and illegal. At this juncture, the said police, besides becoming exposed to have registered the case in a motivated manner in connivance with the defacto-complainant therein, aimed at initiating an enquiry under Section 145 Cr.P.C. as pre-planned also becomes liable for adverse comments for having not registered the case under the relevant criminal provisions of law, if any, based on the facts and circumstances of the case made out on the complaint.

20. Coming to the second question raised above regarding the jurisdiction of the Executive Magistrate, whether it is the Tahsidlar being the Taluk Magistrate or the Sub Divisional Revenue official being the Sub Divisional Executive Magistrate, they could alone arrive at the conclusion in application of their mind, either based on a report by the jurisdiction police or on their own information, to consider whether there is a fit case for initiating such a proceeding under Section 145 Cr.P.C. and none else. It is relevant to point out that to decide whether there is the existence of the breach of peace or tranquility is in the estimate of the Magistrate concerned and not the police.

21. Regarding the third point raised above, which is connected to the second one, at the time of registering the case, the Magistrate has to take into consideration not only the recitals of the Section but also the propositions held by the High Courts and the Supreme Court so as

to find out whether under such a situation, a proceeding could be either initiated or rescinded with. One such situation to avoid initiating a proceeding under Section 145 Cr.P.C. is the order passed in a suit by the civil forum of law restraining any party from interfering with the subject concerned and in the case in hand, in spite of a specific suit filed in the civil Court in O.S.No.7876 of 1999 by the third respondent against the Highways wherein the petitioner got impleaded himself as the party defendant association regarding the physical possession, ultimately providing with an interim order against dispossession of the members of the association, the second respondent/Tahsildar and Executive Magistrate has no right or locus standi to initiate the proceeding under Section 145 Cr.P.C., which is basically irregular. In such circumstances, wherein proceedings are pending and orders are passed by the civil Court regarding the disputed property, it is not the duty of the police concerned and the revenue authority to interfere with the Court order and they cannot initiate a parallel proceeding.

22. Coming to the fourth question regarding the powers of the Collector to entertain an appeal or revision, it could be answered in one sentence that nothing of that sort is provided for under the Code or in any other law for the time being in force empowering the District Collector to entertain either an appeal or revision and therefore the proceeding initiated and the show-cause notice issued are nothing but without jurisdiction and illegal.

23. It is relevant to point out, at this juncture, that the entire proceeding initiated right from the registering of the criminal case by the K-10 Koyambedu police and thereafter the initiation of proceeding under Section 145 Cr.P.C. by the Tahsildar and the Taluk Executive Magistrate, Egmore-Nungambakkm and the orders passed by him and thereafter the appeal entertained and the impugned show-cause notice issued by the District Collector seeking the petitioner to explain within 15 days as to why the order passed by the Tahsildar and the Executive Magistrate should not be set aside, are all illegal and without force of law and they all become liable to be quashed.

24. In the above circumstances, the only course open for parties is to carry on with the suit pending in O.S.No.7876 of 1999 on the file of the Court of XIII Assistant Judge, City Civil Court, Madras after impleading such parties, who are the interested parties such as the revenue officials and others either for or against and to conduct the suit for finality of decision and to act in accordance with the decree passed in the suit. Parties are also at liberty to initiate their own suits in the civil jurisdiction concerned with the property with specific prayers and against such parties for a binding decision to be arrived at and enforce. Neither any breach of peace nor any tranquility seems to have involved nor is there any room for the Tahsildar and the Executive Magistrate or the District Collector, Chennai to cause interference any more in this regard and they can cause their interference only in the absence of any order by the civil Court under warranting situation that there is an imminent threat to breach of peace and tranquility to the subject as required under Section 145 Cr.P.C.

25. However, on a overall consideration of the facts and circumstances encircling the whole affair and having regard to the materials placed on record and upon hearing the learned counsel for both, since it comes to be known that the members of the third respondent Association are only in possession at present, which is not disputed by the other side, the same status-quo shall continue pending disposal of the suit in O.S.No.7876 of 1999 on the file of the Court of XIII Assistant Judge, City Civil Court,Madras.
In result,
(i)The case registered by the K-10 Koyambedu Police in Cr.No.1055/200 2 and the subsequent proceedings initiated by the Tahsildar and the Executive Magistrate, Egmore-Nungambakkam Taluk, Chennai under Section 145 Cr.P.C. are hereby quashed.
(ii)The order dated 20.1.2003 made in C3/11949/02 by the Tahsildar and the Executive Magistrate, Egmore-Nungambakkam Taluk, Chennai-600 03 1 is hereby set aside.
(iii)The show-cause notice dated 21.5.2003 issued by the District Collector, Chennai in his proceedings J3/55003/2002 and the consequential order passed by him in his proceedings J3/55003/2002 dated 5.6.2003 are also set aside.

(iv)The status-quo as on the date of the order of the Tahsildar and Taluk Magistrate, as indicated in para No.25 above, shall continue till the disposal of the suit in O.S.No.7876 of 1999 on the file of the Court of XIII Assistant Judge, City Civil Court, Madras.

The above criminal original petition is disposed of accordingly.
Consequently, Crl.M.P.Nos.5288,5289 and 6149 of 2003 are closed.

Index: Yes
Internet: Yes

Rao

To

1.The Registrar,
City Civil Court, Madras.

2.The Collector,
Chennai District,
Chennai-600 001.

3.The Executive Magistrate,
Egmore-Nungambakkam Taluk,
Spur Tank Road, Chennai-600 031.

4.The Inspector of Police,
K-10 Koyambedu Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.